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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/241,744	02/01/1999	MURRAY D. EINARSON	46-01US	9118

7590 11/26/2003

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CANADA

EXAMINER

POLITZER, JAY L

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 11/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/241,744

Applicant(s)

EINARSON ET AL.

Examiner

Jay L Politzer

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6, 16-20 and 26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 16-20 and 26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Serial Number: 09/1,744

Art Unit: 2856

Title: Multi-Level Monitoring Well

Filed: 2/1/99

Inventor(s): Einarson et al

Attorney(s): Asquith

### ***DETAILED ACTION***

#### **MISNUMBERED CLAIM:**

1. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 21 been renumbered 26.**REJECTIONS OVER PRIOR ART UNDER 35 U.S.C. § 103:**

2. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

"A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

3. Claims 1-6, 16-20 and 26 are rejected under 35 U.S.C. § 103 as being unpatentable over Harris.

Regarding Claims 1-4, 6, 16, 18 and 20; see abstract,

Figs 1-3, and Col 2, Li 65-68. Harris fails to specify

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"unitary construction" however, at Col 2, Li 51-53, Harris forms the pipe in sections only "for ease of handling". It would have been obvious to one of ordinary skill in the art at the time of the invention to use unitary construction if ease of handling was not an issue.

Regarding Claim 5; see Col 5, Li 1-2.

Regarding Claim 17; the apertures can be placed anywhere and it is obvious to place them at known depths.

Regarding Claim 19; see Col 4, Li 25-30.

Regarding Claims 20 and 26; see Col 1, Li 25-27.

#### **DESCRIPTION OF UNAPPLIED ART:**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure because it teaches other multi-level monitoring inventions.

#### **FINAL ACTION:**

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED

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STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

**REMARKS:**

6. Applicant's arguments filed 9/12/01 have been fully considered but they are not persuasive.

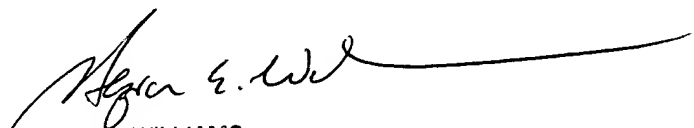
Applicant's sole argument is that the instant invention contemplates unitary construction while Harris uses pipe sections that are coupled together.

One-piece construction, in place of separate elements fastened together, is a design consideration within the skill of the art. In re Kohno, 391 F.2d 959, 157 USPQ 275 (CCPA 1968); In re Larson, 340 F.2d 965, 144 USPQ 347 (CCPA 1965).

**INQUIRIES:**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. Jay L. Politzer whose telephone number is (703) 305-4930 and whose direct facsimile number is (703) 746-4427.
8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Hezron E. Williams, can be reached at (703) 305-4705.
9. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-4900.

jlp 10/24/03

  
HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800

